

HIPAA and Mentally Ill Adult Children

The Health Insurance Portability and Accountability Act (HIPAA) is meant to protect patients' and consumers' privacy rights. HIPAA ensures a patient has control over how their health care information is used and disclosed by their health care providers¹. HIPAA allows health care providers fully to disclose patient information and mental health treatment to a parent or guardian only if the patient is 18 years old or younger. Patients above the age of majority must give their consent before medical information can be disclosed to third parties.

Some argue HIPAA presents a bind for families of people with serious mental illness, such as those suffering major depression, schizophrenia, bipolar disorder, and borderline personality disorder. By restricting disclosure of health information, HIPAA can leave family members in the dark when their loved one will not share treatment details. HIPAA makes no exceptions, even in the case of adult children whose parents are still considered the primary care-givers. In these situations, parents cannot access their child's health care information unless the adult child consents. Sharing health care information with parents can be crucial to stabilizing a mentally ill adult child's treatment and daily life. Disclosure of health information may help minimize failures to follow medication or therapy guidelines and improve communication with law enforcement and school administration in ways that could prevent crises.

Dr. E. Fuller Torrey, a psychiatrist and founder of the Treatment Advocacy Center, a mental health advocacy group, explains that HIPAA was not written with mental illness in mind: "When someone has cancer, you can make the assumption that their brain is working normally so that they can make an informed decision as to whether or not they want their loved ones to know exactly what the details of the cancer is...you can't make that assumption about people with schizophrenia or bipolar disorder."²

In December 2013, the Helping Families in Mental Health Crisis Act³ (H.R. 3717) was proposed. This bill would make available needed psychiatric, psychological, and supportive services for individuals diagnosed with mental illness and families in mental health crisis.⁴ H.R. 3717 would also allow families to access health information about their adult children with serious mental illnesses. Some opponents of this bill argue that patients with mental illnesses have as much of a right to keep their health information private as patients suffering from other types of illnesses. Moreover, opponents are concerned that weakening confidentiality protections in this way would make some patients less willing to seek psychological treatment, thereby doing more harm to patients than good.

STUDY QUESTIONS

- (1) Do we have a right to keep our health care information private? If so, what are the limits of this right? If not, why not?
- (2) Should concerns about a patient's right to privacy outweigh considerations about their mental competency?
- (3) When, if ever, do adults have an obligation to disclose personal health information to their family members?
- (4) Should information about a patient's mental health care be protected from disclosure in the same way that information about other types of patient care are?

¹ <http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/mhguidance.html>

² <http://www.npr.org/blogs/health/2014/06/04/318765929/privacy-law-frustrates-parents-of-mentally-ill-adult-children>

³ <http://murphy.house.gov/helpingfamiliesinmentalhealthcrisisact>

⁴ <http://murphy.house.gov/uploads/HR3717%20Bill%20Text.pdf>